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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/828,519	04/06/2001	Andrew W. Lo	1869-003A	6245

9629 7590 10/20/2004

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EXAMINER

FELTEN, DANIEL S

ART UNIT	PAPER NUMBER
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3624

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/828,519

Applicant(s)

LO ET AL.

Examiner

Daniel S Felten

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on 19 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. Receipt of the Amendment filed July 19, 2004 is acknowledged. Claims 1-10 remain pending in the application and are presented to be examined based upon their merits.

### ***Response to Arguments***

As per arguments presented regarding the September 26, 2004 Office Action, the Examiner provided a new grounds of rejection based upon newly cited art. Claims 6-10 were amended to include limitations that were previously presented in claim 1. The April 12, 2004 Office Action presented arguments to cover claims 1, 6-10 in further view of Castiglione. In the office action it was asserted, and is maintained in this Office Action that because Black includes within the invention's process the technical analysis of price data, it would have been obvious for an artisan of ordinary skill in the art at the time of the invention of Black to integrate/substitute the pattern recognition processor as well as the curve fitting technique disclosed within Negishi and Castiglione, as alternatives to Black's price data analysis because an artisan at the time of the invention of Black would have been motivated to use these (and various other) well known techniques to effectively analyze market price data and find new market trends.

Regarding the applicants assertion that the motivations for combining Black with the combination of Negishi and Castiglione are not supported in the references it is maintained by the Examiner that the test for obviousness under 35 USC 103 is what the combined teachings of the applied references, when taken as a whole, would have suggested to one of ordinary skill in the art. [see *In re Keller*, 642 F. 2d 413, 208 USPQ 871 (CCPA 1981); *In re McLaughlin*, 443 F.2d 1392, 170 USPQ (CCPA 1971)]. In response to Applicant's argument that there is not suggestion to combine references, the Examiner recognizes references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary references and secondary references [see *In re Nomija*, 184 USPQ 607 (CCPA 1975)]. However, there is no requirement that the motivation to make the modification be expressly articulated. The test for combining references is the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art [see *In re McLaughlin* 170 USPQ 209 (CCPA 1971)]. Thus the rejections presented within the April 12, 2004 Office Action are maintained.

### ***Conclusion***

1. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S Felten whose telephone number is (703) 305-0724. The examiner can normally be reached on Flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (703) 308-1065. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Daniel S Felten  
Examiner  
Art Unit 3624



DSF  
October 18, 2004

VINCENT MILLIN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600